

Part 4

Justification Excluding Criminal Responsibility

76-2-401 Justification as defense -- When allowed.

- (1) Conduct which is justified is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:
- (a) when the actor's conduct is in defense of persons or property under the circumstances described in Sections 76-2-402 through 76-2-406 of this part;
 - (b) when the actor's conduct is reasonable and in fulfillment of his duties as a governmental officer or employee;
 - (c) when the actor's conduct is reasonable discipline of minors by parents, guardians, teachers, or other persons in loco parentis, as limited by Subsection (2);
 - (d) when the actor's conduct is reasonable discipline of persons in custody under the laws of the state; or
 - (e) when the actor's conduct is justified for any other reason under the laws of this state.
- (2) The defense of justification under Subsection (1)(c) is not available if the offense charged involves causing serious bodily injury, as defined in Section 76-1-601, serious physical injury, as defined in Section 76-5-109, or the death of the minor.

Amended by Chapter 126, 2000 General Session

76-2-402 Force in defense of person -- Forcible felony defined.

- (1)
- (a) A person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person's imminent use of unlawful force.
 - (b) A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force, or to prevent the commission of a forcible felony.
- (2)
- (a) A person is not justified in using force under the circumstances specified in Subsection (1) if the person:
 - (i) initially provokes the use of force against the person with the intent to use force as an excuse to inflict bodily harm upon the assailant;
 - (ii) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or
 - (iii) was the aggressor or was engaged in a combat by agreement, unless the person withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force.
 - (b) For purposes of Subsection (2)(a)(iii) the following do not, by themselves, constitute "combat by agreement":
 - (i) voluntarily entering into or remaining in an ongoing relationship; or
 - (ii) entering or remaining in a place where one has a legal right to be.

- (3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(a)(iii).
- (4)
- (a) For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76, Chapter 6, Offenses Against Property.
 - (b) Any other felony offense which involves the use of force or violence against a person so as to create a substantial danger of death or serious bodily injury also constitutes a forcible felony.
 - (c) Burglary of a vehicle, defined in Section 76-6-204, does not constitute a forcible felony except when the vehicle is occupied at the time unlawful entry is made or attempted.
- (5) In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors:
- (a) the nature of the danger;
 - (b) the immediacy of the danger;
 - (c) the probability that the unlawful force would result in death or serious bodily injury;
 - (d) the other's prior violent acts or violent propensities; and
 - (e) any patterns of abuse or violence in the parties' relationship.

Amended by Chapter 324, 2010 General Session

Amended by Chapter 361, 2010 General Session

76-2-403 Force in arrest.

Any person is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another from bodily harm while making an arrest.

Enacted by Chapter 196, 1973 General Session

76-2-404 Peace officer's use of deadly force.

- (1) A peace officer, or any person acting by the officer's command in providing aid and assistance, is justified in using deadly force when:
- (a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(2), (3), or (4);
 - (b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and
 - (i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or
 - (ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or
 - (c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.
- (2) If feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (1)(b) or (1)(c).

Amended by Chapter 47, 2015 General Session

76-2-405 Force in defense of habitation.

- (1) A person is justified in using force against another when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his habitation; however, he is justified in the use of force which is intended or likely to cause death or serious bodily injury only if:
 - (a) the entry is made or attempted in a violent and tumultuous manner, surreptitiously, or by stealth, and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person, dwelling, or being in the habitation and he reasonably believes that the force is necessary to prevent the assault or offer of personal violence; or
 - (b) he reasonably believes that the entry is made or attempted for the purpose of committing a felony in the habitation and that the force is necessary to prevent the commission of the felony.
- (2) The person using force or deadly force in defense of habitation is presumed for the purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the entry or attempted entry is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or surreptitiously or by stealth, or for the purpose of committing a felony.

Amended by Chapter 252, 1985 General Session

76-2-406 Force in defense of property -- Affirmative defense.

- (1) A person is justified in using force, other than deadly force, against another when and to the extent that the person reasonably believes that force is necessary to prevent or terminate another person's criminal interference with real property or personal property:
 - (a) lawfully in the person's possession;
 - (b) lawfully in the possession of a member of the person's immediate family; or
 - (c) belonging to a person whose property the person has a legal duty to protect.
- (2) In determining reasonableness under Subsection (1), the trier of fact shall, in addition to any other factors, consider the following factors:
 - (a) the apparent or perceived extent of the damage to the property;
 - (b) property damage previously caused by the other person;
 - (c) threats of personal injury or damage to property that have been made previously by the other person; and
 - (d) any patterns of abuse or violence between the person and the other person.

Amended by Chapter 377, 2010 General Session

76-2-407 Deadly force in defense of persons on real property.

- (1) A person is justified in using force intended or likely to cause death or serious bodily injury against another in his defense of persons on real property other than his habitation if:
 - (a) he is in lawful possession of the real property;
 - (b) he reasonably believes that the force is necessary to prevent or terminate the other person's trespass onto the real property;
 - (c) the trespass is made or attempted by use of force or in a violent and tumultuous manner; and

- (d)
 - (i) the person reasonably believes that the trespass is attempted or made for the purpose of committing violence against any person on the real property and he reasonably believes that the force is necessary to prevent personal violence; or
 - (ii) the person reasonably believes that the trespass is made or attempted for the purpose of committing a forcible felony as defined in Section 76-2-402 that poses imminent peril of death or serious bodily injury to a person on the real property and that the force is necessary to prevent the commission of that forcible felony.
- (2) The person using deadly force in defense of persons on real property under Subsection (1) is presumed for the purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the trespass or attempted trespass is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or for the purpose of committing a forcible felony.

Enacted by Chapter 273, 2002 General Session

76-2-408 Peace officer use of force -- Investigations.

- (1) As used in this section:
 - (a) "Dangerous weapon" is a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury.
 - (b) "Investigating agency" is a law enforcement agency, the county or district attorney's office, or an interagency task force composed of officers from multiple law enforcement agencies.
 - (c) "Officer" is a law enforcement officer as defined in Section 53-13-103.
 - (d) "Officer-involved critical incident" is any of the following:
 - (i) the use of a dangerous weapon by an officer against a person that causes injury to any person;
 - (ii) a fatal injury to any person except the officer, resulting from the use of a motor vehicle by an officer;
 - (iii) the death of a person who is in law enforcement custody, but not including deaths that are the result of disease, natural causes, or conditions that have been medically diagnosed prior to the person's death; or
 - (iv) a fatal injury to a person resulting from the efforts of an officer attempting to prevent a person's escape from custody, make an arrest, or otherwise gain physical control of a person.
- (2) When an officer-involved critical incident occurs:
 - (a) upon receiving notice of the officer-involved critical incident, the law enforcement agency having jurisdiction where the incident occurred shall, as soon as practical, notify the county or district attorney having jurisdiction where the incident occurred; and
 - (b) the chief executive of the law enforcement agency and the county or district attorney having jurisdiction where the incident occurred shall:
 - (i) jointly designate an investigating agency for the officer-involved critical incident; and
 - (ii) designate which agency is the lead investigative agency if the officer-involved critical incident involves multiple investigations.
- (3) The investigating agency under Subsection (2) may not be the law enforcement agency employing the officer who is alleged to have caused or contributed to the officer-involved critical incident.

- (4) This section does not preclude the law enforcement agency employing an officer alleged to have caused or contributed to the officer-involved critical incident from conducting an internal administrative investigation.
- (5) Each law enforcement agency that is part of or administered by the state or any of its political subdivisions shall, by December 31, 2015, adopt and post on its publicly accessible website:
 - (a) the policies and procedures the agency has adopted to select the investigating agency if an officer-involved critical incident occurs in its jurisdiction and one of its officers is alleged to have caused or contributed to the officer-involved incident; and
 - (b) the protocols the agency has adopted to ensure that any investigation of officer-involved incidents occurring in its jurisdiction are conducted professionally, thoroughly, and impartially.

Enacted by Chapter 178, 2015 General Session